



August 29, 2000

Mr. Jesus Toscano, Jr.  
Assistant City Attorney  
City of Dallas  
1500 Marilla 70 North  
Dallas, Texas 75201

OR2000-3341

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138479.

The City of Dallas (the “city”) received a request for information regarding the location of fiber optic cables and conduits in the public right-of-way in a specified area of the city. You assert that the requested information may be excepted from disclosure under section 552.110 of the Government Code. You have provided a representative sample of the responsive information.<sup>1</sup>

Pursuant to section 552.305 of the Government Code, you notified ten telecommunications companies of the request because the companies’ property interests may be involved. Section 552.305 of the Government Code provides that if release of a third party’s proprietary information may be subject to exception under section 552.110, a governmental body must make a good faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure. *See Gov’t Code § 552.305(d)*; Open Records Decision No. 542 at 2-3 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). In this instance,

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

two telecommunications companies, Time Warner Telecom and AT&T, responded to your notice by submitting briefs to this office.

Eight companies did not respond. As you inform us ~~that~~ you do not possess any information related to one of the companies, Southwestern Bell, that is responsive to the request, we assume that you do possess responsive information relating to the remaining seven companies which did not respond to your notice. Because those companies have not submitted to this office any reason to withhold the requested information or any documentation in support of any such reason, we have no basis to conclude that the information is excepted from required public disclosure. Therefore, the city must release all responsive information relating to MCI Worldcom, Intermedia Communications, Inc., TCG, Qwest Network Construction Services, TU Integrated Solutions, Level (3) Communications, L.L.C., and CSD.

AT&T responded to your notice by informing this office that it had communicated with the requestor to determine the precise scope of the request. Having ascertained that the requestor seeks "the general location of [AT&T's] telecommunications facilities in public rights-of-way" "in the area encircling the downtown side of the Trinity River, along Industrial Boulevard, from Continental Boulevard, down to the Dart light rail line south of Corinth Street," AT&T informs us that it does not object to release of that information. The city must release the requested information as it relates to AT&T.

Finally, Time Warner Telecom responded through its attorneys by asserting that the maps and engineering drawings it has submitted to the city contain "very sensitive information, such as the location of fiber splice enclosures, central office hubs, and fiber optic bidirectional count indicators," which should be excepted from disclosure under section 552.110. Section 552.110 of the Government Code protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision; and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

A "trade secret"

may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business in that it is not simply information as to single or ephemeral events in the conduct of the

business, as for example the amount or other terms of a secret bid for a contract or the salary of certain employees. . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

There are six factors to be assessed in determining whether information qualifies as a trade secret:

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision No. 232 (1979). This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990). However, where no evidence of the factors necessary to establish a trade secret claim is made we cannot conclude that section 552.110 applies. Open Records Decision No. 402 (1983).

Time Warner Telecom addresses each of the six trade secret factors in its brief to this office. The company maintains that it "considers the maps and engineering drawings to be

extremely confidential” and that it has not made that information available to persons outside the company, other than the city itself and the company’s vendors. The company requires its vendors to execute confidentiality agreements. In addition, within the company, the information is only available on a “need-to-know” basis. The company also emphasizes the value the information would have to competitors and the difficulty others would have duplicating the technical information contained on the drawings. After examining all of the arguments, we find that the maps and engineering drawings of Time Warner Telecom are protected as trade secret information under section 552.110. The city must withhold the maps and engineering drawings of Time Warner Telecom from the requestor.

In summary, the city must release the responsive information relating to AT&T, MCI Worldcom, Intermedia Communications, Inc., TCG, Qwest Network Construction Services, TU Integrated Solutions, Level (3) Communications, L.L.C., and CSD. The city must withhold the maps and engineering drawings of Time Warner Telecom. As we find that Time Warner Telecom’s information is excepted from disclosure as trade secret information under section 552.110(a), we will not address the company’s commercial or financial information argument under section 552.110(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 138479

Encl. Submitted documents

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